IN RE ARBITRATION BETWEEN:

AFSCME

and

WINONA COUNTY

DECISION AND AWARD OF ARBITRATOR
BMS CASE # 16-PN-0950

JEFFREY W. JACOBS

ARBITRATOR

November 7, 2016

IN RE ARBITRATION BETWEEN:

AFSCME

and DECISION AND AWARD OF ARBITRATOR
BMS CASE # 16-PA-0950

Winona County, Minnesota

APPEARANCES:

FOR THE UNION:
Teresa Joppa, Attorney for the union

FOR THE EMPLOYER:
Gregory J. Griffiths, Attorney for the County

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. The Bureau of Mediation Services certified the issue of health insurance to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7.

The parties were able to agree on all other terms of the collective bargaining agreement, CBA except health insurance. That remains the sole issue for determination in this matter.

A hearing in the above matter was held on October 5, 2016 at the Winona County Government Center, Winona, Minnesota. The parties presented oral and documentary evidence at that time. Post-hearing briefs were mailed and received by the arbitrator on October 19, 2016 at which time the hearing was considered closed.

ISSUES PRESENTED

The issue in dispute at the time of the hearing is as follows: Health Insurance Contributions for Single Coverage in 2017 and 2018.

UNION'S POSITION

The Union's position was for no change in the current contract language which has the employer paying for the cost of single coverage.

In support of this the Union made the following contentions:

1. Two previous interest arbitrators hearing issues between these parties determined that the Winona Assistant County Attorneys should not be required to contribute towards the cost of their single health insurance premiums. The union argued that this arbitrator follow the lead of the prior two interest awards.

2. The union noted that nothing has changed in the County's argument here as compared to the arguments it made before Arbitrator Paull and Lundberg yet both of them rejected the County's arguments – which the union asserted were identical and made on the identical facts. There is thus no basis on which to alter those rulings.

3. The union also noted that all of the Assistant County Attorneys, ACA's in this unit take only single coverage, which actually saves the County considerable money. If any of them took family coverage, the cost would be much greater. Thus, there is no economic basis for the requested change.

4. The union noted that despite the County's claim for consistency with other units, there is little internal consistency in wage structure or benefits packages across the various other bargaining units within Winona County. See page 45 of the union's exhibits, showing differences in the number of wage steps to top pay, as well as a history of a lack of consistency in wage settlements, See Lundberg award, which noted a difference in the wage settlement for differing units in Winona County

5. The union also noted that there is considerable external support for its position and noted that many of the comparison counties pay the full cost of single health insurance coverage. The union noted that the comparison counties are as follows: Blue Earth, Chisago, Clay, Crow Wing, Goodhue, Itasca, Kandiyohi, Ottertail, and Rice. The union noted that most of these provide at least one plan whereby the employer pays 100% of single health coverage.

6. The union also noted that struct adherence to internal consistency is not necessarily the determinative factor and cited several cases in support of that proposition. Thus, while most employers argue for internal consistency in benefit packages, the union argued against that in this case, because there is very little internal consistency.

7. Further, the union argued that that factor alone does not and should not carry the day for the County in this case. See, e.g. See *City of Willmar and LELS*, BMS Case # 12-PN-0441 (Latimer 2012) and *Wabasha County & Teamsters 320*, BMS Case # 14-PN-0916 (Latimer 2015). See, also, *St. Paul Police Federation & City of St Paul*, BMS Case 14-PN-0040 (Fogelberg 2014). In those cases, the arbitrators questioned whether there was internal consistency and noted that to adopt an internal consistency position rigidly strips each bargaining unit of its ability to bargain effectively. The union also argued that for these reasons the County's internal consistency arguments should be rejected.

8. The union argued that there is no compelling reason for the County's request nor was there any quid pro quo offered in negotiations in exchange for a change in this language. There has been for example, no significant increase in health insurance rates for the County. While, some of the other bargaining units in the County have agreed to pay the 15% requested by the County for their single health coverage, there was no evidence of why those units agreed to that, or whether they were offered anything in exchange for that concession. What is known is that nothing was offered to this unit in exchange for their agreement to give up hard-won benefits. There is thus no reason to change this language now either from an economic standpoint nor from an internal consistency standpoint.

9. The union cited awards that have recognized the principle generally that there must either be a compelling reason or something offered of value in exchange for such a change in language or benefits. Nothing of the sort was made here and, as noted above, the County cannot be heard to make the same arguments regarding a need for the change, since the prior two awards specifically ejected that very same argument.

10. The union also noted that the cost to the employees would be significant and would in effect be a reduction in their compensation whereas the cost to the County is minimal. Half the ACAs are on the low end of the pay scale and many still owe thousands of dollars in student loans.

11. Further, the union asserted that there is ample money available to pay the cost of single health insurance for these employees. This unit is small and relative cost is very low. The union noted that some members of the County Board were very conservative and that they are unrealistic in their assessments of the costs. They have artificially kept tax rates low for too long and are now simply paying the prices for that level of fiscal action. The union argued that the County has ample funds to continue to pay these modest costs. See union exhibits at pages 43, 48 and 51-52.

12. The union also alluded to the fact that this particular County has been more than fiscally conservative over the course of time. It has failed to invest in its facilities or raise adequate funds to maintain them. This led lo the problems County witnesses referenced in having to remodel the jail and make improvements to roads and other infrastructure and the union argued that these are political choices made by the Board but have little relevance to the issue in interest arbitration. There is more than ample money to pay these costs; no significant financial burden and no showing of any financial crisis in Winona County. The union asserted that, to the contrary, unemployment is low, the economy locally is quite strong and that the County faces a healthy financial future. The mere fact that the County wants to keep taxes artificially low by failing to adequately compensate its employees is not a controlling factor in an interest arbitration.

13. The essence of the union's argument is that there have been two prior awards in its favor in this very issue, based on the same facts and the same arguments. Further, there is no compelling reason nor any significant change in the County's situation that compels this change nor anything of value offered to this unit during negotiations that justifies the County's requested change. Finally, there is ample funds to pay for this on a continuing basis.

The Union seeks an award for no change in the existing language in the contract.

COUNTY'S POSITION

The County's position is for a change in the existing language regarding health insurance requiring the affected employees to pay 15% of the cost of single health coverage. In support of this position the County made the following contentions:

1. The County acknowledged the rulings in the prior awards on this issue but argued that their rationale is not strictly relevant here. Arbitrator Paull appears to base his decision on the fact that no Assistant County Attorneys took family coverage and thus should not be required to bargain single coverage. Arbitrator Lundberg, reasoned that these employees should not be required to pay for their coverage due to what he felt was wages that did not reflect the value of their jobs. In other words, since their pay was too low, these employees should not have to pay for their health coverage. The County argued that these factors should not control the discussion now.

2. The County noted that this unit is small in comparison to some of the other units yet some of those other larger units have agreed to the 15% contribution to health insurance. The County made an internal consistency argument and asserted that it wants to move toward an internally consistent pattern and benefit package for all employees. Allowing one unit to remain an outlier thwarts that and creates disharmony among the rest of the employees causing "me too" bargaining, whereby the other units will want the same thing. This too will foster dissension among units and encourage the essential units to move to arbitration rather than to negotiated settlements.

3. The County asserted that it has long been held by interest arbitrators that internal consistency of fringe benefits, such as health insurance is the most important factor. See, e.g., *Wright County Deputies Association and Wright County*, BMS Case No. 12-PN-0968 (Befort, 2013); *see also Law Enforcement Labor Services, Inc. and McLeod County*, BMS Case No. 03-PN-613 (Kircher, 2003); *Law Enforcement Labor Services, Inc. and Chisago County*, BMS Case No. 95- PN-54 (Berquist, 1995). These cases and many others stand for the proposition that internal consistency is paramount and should be encourage whenever possible.

4. Here the cost to the employees will be modest and any financial burden should be weighed against that very strong policy toward internal consistency. The County noted to that the ACAs earn far more than many other County employees yet those other relatively lower paid individuals now contribute 15% toward their single coverage. Thus, the argument by the union that there will be a significant burden is not fully supported by the facts. Further, the cost of law school should not be a factor in this determination. These individuals made a strategic choice knowing full well the costs involved in a law school education. Their earning capacity over time will be far greater than many other individuals in the economy. The County argued that arguing that these individuals' law school costs is analogous to arguing that one employee should be paid more because he/she has more children than the person sitting next to them at work.

5. While there are differences in wage structure, the County asserted that for years now and over several rounds of bargaining with its various units, it has made it a priority to move to internal consistency in health insurance and, as noted herein, many of the other larger units have already agreed to the County's plan. In order to move to internal consistency, the County asserted that its position should be awarded.

6. The County further asserted that the underlying principle in interest arbitration is to arrive at what the parties would have been able to agree upon themselves had they negotiated a settlement. The best evidence of that, according to the county is what other units have in fact agreed to. Here many of the units agreed to the County's position and make the 15% contribution to single coverage. There is thus no reason to believe that this small unit would be able to whipsaw the County into an agreement when a unit of over 275 employees could not. See e.g., the AFSCME Council 65 Courthouse unit CBA.

7. The County asserted that it suffered through very hard times after the great recession of 2008 and drew down its reserves without increasing taxes in order to meet its obligations. Those reserves are now dangerously low and the County needs to find ways to economize as best it can so as not to have to increase taxes on its residents and businesses. The County acknowledged that it has the funds to continue to pay the cost of single coverage but asserted that it is looking for ways to cut costs wherever possible and that this is one way the Board has attempted to do so.

8. The County asserted that the decisions made by the County Board are beyond an arbitrator's or union's purview to change or modify. This county has made a policy decision to keep insurance costs under control and has sought to do so proactively for all the reasons set forth above. While it can pay these costs, the question is not whether it can but whether it should. The County argued that it should not have to treat these employees differently than it has treated its other employees and that they too should pay toward the cost of health insurance – just like everybody else.

9. The County outlined some of the challenges it faces, such as having to make significant improvements to the jail in order to bring it into compliance with current State requirements, failing to fill open positions and frozen hiring. While the County now has some financial stability, it is because of these cost cutting, budget conscious measures.

10. The City further argued that having employees take some ownership for their own health cost is yet another way to reduce those costs by making the employees take some responsibility for those costs. This will benefit the entire County and all the employee as well as this unit.

11. The County also noted that while internal comparisons remains the most significant factor in a case like this, external issues support its positions. The County cited data that employee contributions to health insurance in the overall economy has increased by over 80% in the past 10 years. It is thus reasonable to assume that employees are being asked to contribute to their health insurance costs and thus avoid the free ride these employees have been receiving for many years.

12. Most employers, both public and private are moving away from paying 100% of the cost of single coverage and it must be anticipated that the cost of health insurance will rise and continue to cost the County more and more over time. The County asserted that it is acting proactively in keeping these costs down now and should be encouraged.

13. The County asserted that *Arneson v Blue Earth County* and Minn. Stat. 388.18 do not apply here. That statute applies to a District Court must apply in a salary appeal by the county attorney. This case does not involve salary and therefore has no application here.

14. The essence of the County's argument is that it has sought over several rounds of bargaining to achieve internal consistency with regard to health insurance and has done so successfully with many of its units. There is no compelling reason to treat these employees differently. Further, it is clear that the County would never have agreed to the union's request had these parties been able to negotiate this to conclusion without interest arbitration and in support of that assertion the county pointed to other voluntary settlements. Further, the County seeks to keep its costs under control and that political decision is one that only the elected County Board gets to make and is not for the union to alter or modify.

The County seeks an award amending the existing language requiring the affected employees to pay 15% of the cost of single health insurance.

MEMORANDUM AND DISCUSSION

This issue has arisen at least twice before and has been decided by two well-regarded arbitrators whose decisions were reviewed in some detail and found to be not only well reasoned and based on sound principles applicable in interest arbitrations in the State of Minnesota. In both these cases the county made similar arguments with regard to attempting to compel these employees to contribute 15% of the cost of single coverage. In both of those cases, the County's arguments were rejected, albeit for somewhat different reasons.

The question now is whether the County's request should be granted and the contract changed from the existing 100% employer contribution to the County's requested change whereby the employees will pay 15% of the cost of single coverage.

INTERNAL CONSISTENCY

Several factors were considered in determining whether the County's position should be awarded. The first was internal consistency. It is quite true that for many years, interest arbitrations have regarded internal consistency of fringe benefits to be a major, if not sometimes controlling factor. In many of these though the question has been whether a request to change an existing internal pattern should be granted where such a pattern has already existed. See, e.g. *HCDSA and Hennepin County*, 10-PN-0776 (Jacobs 2010) here there was an already existing clear pattern of internal consistency of wages and fringe benefits that the union sought to alter. There are of course many more decisions ruling that internal consistency is an important factor but as the union pointed out, it is not always an absolute and each case must still be reviewed on its own facts and circumstances.

This case is thus much more akin to *Teamsters Local 320 and Clearwater County,* BMS # 15-PN-0652 (Jacobs 2015) where the County had also arbitrated the question of an increased employee contribution to health insurance before two other well respected arbitrators who had also ruled in favor of the union and awarded no change in the existing language. The County had also made an internal consistency argument and asserted that it was being fiscally conservative and seeking to move to an internally consistent pattern of benefits for its various employees. In each of the arbitrations involved in that matter, and in large measure as discussed by arbitrators Paull and Lundberg in the cases between these parties, the issue was essentially sent back for the parties to negotiate for themselves.

The County's argument is essentially that other units have voluntarily negotiated the 15% contribution and that it now justifiably seeks the same for this unit to maintain internal consistency for the reasons set forth above. This goal is understandable, but the question is whether there is the evidence to support awarding it in interest arbitration.

Without the prior arbitral awards this might well have been a persuasive argument. Internal consistency is generally accepted as a desirable goal for benefits such as health insurance. Here though the parties' history is a more compelling factor, especially in light of two well-reasoned and appropriately decided arbitral awards in just the past few years.

Moreover, as discussed below, there was no evidence that anything significant has changed to compel a different result and very little showing of give and take bargaining on this issue.

In each such case, there was a sense that without a compelling need or quid pro quo offered in exchange for the County's position, the language should remain the same.

Here on this somewhat unique record, the notion of internal consistency, on this record, yields to the greater policy having to do with prior awards between the parties and the lack of any compelling showing of a need, discussed below. Thus, while the county wants internal consistency, it is going to likely have to negotiate it in order to get it rather than relying on interest arbitration to award it.

OTHER VOLUNTARY SETTLEMENTS

One other factor that is frequently used by interest arbitrators is to look at what the parties would have negotiated for themselves. This is always a somewhat speculative endeavor. Here though the County's point is that this is a small unit, only 7 employees currently, and that they do not have the bargaining power the other much larger units do. Those larger units did voluntarily negotiate the 15% employee contribution. What is not known is why or how those parties came to that agreement. Further, the stark reality is that the County has tried this now twice before without success. On this record, this argument fails based on much the same rational as that articulated by Arbitrators Paull and Lundberg.

WAS THERE A QUID PRO QUO OR SHOWING OF A COMPELLING NEED FOR THE REQUESTED CHANGE BY THE COUNTY?

The first question is whether there was any quid pro quo offered in exchange for this request. The record is devoid of any such offer. The County simply argued that it wanted to make this change but offered nothing in exchange for a concession by the union and its members. Thus, the first factor in determining whether there should be a change is not met.

The next question is whether there was a showing of a compelling need for this change, The County argued that its financial condition is dire and that it has drawn down its reserves in an effort to be as fiscally conservative as humanly possible. This argument was made before however and rejected before as well.

Further, the mere desire to be fiscally conservative is not a controlling factor in an interest arbitration. The question is whether there is a compelling showing of a need to make this change at this time. On this record, there was not. The County's finances are in good order and that it maintains an appropriate fund balance. Unemployment is relatively low and there was no showing of a present or foreseeable future calamity that might alter this scenario in any material way.

Moreover, while the County does have some future expenses, the evidence showed that this too was related to decisions made by the Board to defer expenses until later. Much like the argument the County made in response to the assertion regarding the amount of student debt these employees carry, the County made these choices presumably knowing that at some future point they might well have to make these improvements to the jail or to other infrastructure. That is not a compelling need to change a labor agreement however. Certainly not on this record. The County clearly has the money and did not make an inability to pay argument in this case. The question is whether there was a showing of a compelling need or some change in the financial condition of the County sufficient to warrant a material change in the labor agreement. There was not on this record.

EXTERNAL FACTORS

In most cases, external comparisons are not controlling on the issue of fringe benefits such as health insurance. There are often many historical factors that lead to why certain employers have a particular policy in place regarding such benefits. Here the evidence cut in both directions. Many of the external comparison counties listed above in fact do pay 100% of the cost of single coverage. That was certainly a factor in the union's favor.

As the County pointed out, there may well be a trend in the overall economy, of having employees contribute toward their health insurance. That however is frankly a factor that these parties can discuss in the upcoming next round of bargaining and hopefully find a voluntary resolution of this concern. On this record, neither factor was given compelling weight.

OTHER FINANCIAL FACTORS.

Very little weight was given to the argument that the ACA's have debt to pay off. They may well have considerable debt to pay but that is not a compelling or controlling factor in interest arbitration. Here the County's point had some merit in that attorneys are paid higher than many of the other County employees who now are paying 15% of the cost of their health insurance. Further, while they may have debt they also likely have a higher earning potential then other employees, whether they stay at the County or move to the private sector. On this record, that argument carried little weight.

Lastly, while the County's desire for internal consistency in health insurance premiums is both understandable and even admirable, the County must by now realize that the writing is on the wall so to speak and that simply making the same arguments without a showing of a quid pro quo or other compelling need is an uphill climb to be sure. There was for example no evidence that the County is unable to pay what the union is claiming.

Accordingly, the evidence as a whole supports the union's position on the issue of health insurance increases.

AWARD ON HEALTH INSURANCE

The Union's position is awarded.

Dated: November 7, 2016

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Jeffrey W. Jacobs, arbitrator

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